

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Bell	Team: Team # 6	CCRB Case #: 200103810	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 05/25/2001 6:30 PM	Location of Incident: On White Plains Road, between 241st Street & 242nd Street	Precinct: 47	18 Mo. SOL 11/25/2002	EO SOL 11/25/2002	
Date/Time CV Reported Fri, 05/25/2001 8:00 PM	CV Reported At: Precinct	How CV Reported: Phone	Date/Time Received at CCRB Fri, 05/25/2001 8:07 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. CPT Thomas Galati	00000	883903	047 PCT
2. LT Paul Deentremont	00000	892944	047 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Paul Deentremont	Abuse: Lt. Paul Deentremont stopped and questioned § 87(2)(b) § 87(2)(b) .	
B.CPT Thomas Galati	Abuse: Captain Thomas Galati stopped § 87(2)(b)	
C.CPT Thomas Galati	Abuse: Captain Thomas Galati frisked § 87(2)(b)	
D.CPT Thomas Galati	Abuse: Captain Thomas Galati searched § 87(2)(b)	

Synopsis

On May 25, 2001, on White Plains Road, between 241st Street and 242nd Street in the Bronx, § 87(2)(b) and his brother, § 87(2)(b) were stopped by two officers, later identified as Lt. Paul Deentremont and Capt. Thomas Galati of the 47 Precinct. Lt. Deentremont requested identification from § 87(2)(b) and asked him he had any drugs or if he had been drinking. § 87(2)(b), § 87(2)(g). Capt. Galati concurrently stopped § 87(2)(b) after which he effected a frisk based on an observation of a bulge in his waistband. § 87(2)(b), § 87(2)(g).

§ 87(2)(b)

§ 87(2)(b)

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§ 87(2)(b)

Summary of Complaint

§ 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on June 9, 2001. At the time of his interview, § 87(2)(b) was a § 87(2)(b). § 87(2)(b) now lives in Kuwait, § 87(2)(b).

On May 25, 2001, § 87(2)(b) was home for Memorial Day weekend, and was visiting his brother, § 87(2)(b). At approximately 6:30 PM, § 87(2)(b) had parked his black Acura on the west side of White Plains Road, between 241st Street and 242nd Street. § 87(2)(b) and his brother, after parking the car, went to a deli across the street, where they purchased two bottles of Becks beer and some candy. When they left the deli, they again crossed the street and went back to the car. While § 87(2)(b) got into his driver seat and closed the door, § 87(2)(b) went around to the other side of the car and stood outside of the passenger side door. At this time, a dark-colored Crown Victoria-like car parked to the right of the front side of § 87(2)(b)'s car. Two male officers in civilian clothes with NYPD tops approached the vehicle; one approached the driver side and one approached the passenger side. The officer that approached § 87(2)(b)'s side, who was wearing a blue NYPD sweater, opened his door, leaned over and looked around in the car, although without breaking the plane of the door. The officer, saying his first words to § 87(2)(b) asked him if he had any drugs or if he had been drinking. § 87(2)(b) told him no, showed him the brown bag which contained the beers, and said "The beers haven't even been opened". The officer then said, "let me see some id" at which time § 87(2)(b) looked to his right side and saw that his brother was leaning up against the car and was being frisked. § 87(2)(b) recounted that he could only see that the officer was running his hands along § 87(2)(b)'s torso, adding that his view was obstructed by the car door. § 87(2)(b) then took out his § 87(2)(b) identification and presented it to the officer. The officer looked at the ID, threw it on to the dashboard, and told § 87(2)(b) "I want to see a New York State driver's license". § 87(2)(b) then gave him his Virginia drivers license, § 87(2)(b).

§ 87(2)(b). § 87(2)(b)

§ 87(2)(b) said "§ 87(2)(b). I'm home for Memorial Day weekend." The officer then put his hand about an inch from § 87(2)(b)'s face and said "Don't you get an attitude with me. I approached you as a gentleman and you should address me as a gentleman, § 87(2)(b)." § 87(2)(b) then questioned the officer "What is the reason for this. What is the probable cause?" and the officer told him "There has been a lot of violence in this area – a lot of people are acting crazy and drinking. We're just checking out the area." The officer then started to walk back to the car and § 87(2)(b) got into the passenger seat and asked § 87(2)(b) what that was all about. § 87(2)(b) told him "I don't know, but I'm pissed. Don't talk to me right now."

The § 87(2)(b) brothers then drove to the house of § 87(2)(b)'s girlfriend, who told them that the officers were probably from the 47 Precinct. § 87(2)(b) and § 87(2)(b) then drove to the precinct to file the complaint. After waiting for three hours for the paperwork to be filed, the two officers who had stopped them came into the precinct, and § 87(2)(b) noted to the officer at the desk that they were the officers against which the complaint was being filed.

Civilian Complaint Report completed by § 87(2)(b) (enclosure 5)

§ 87(2)(b) filed his complaint at the 47 Precinct, immediately after the incident happened. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b) was not interviewed for this case. An extensive effort was made to contact him, including sending letters to his address and delivering a subpoena to his house. None of these efforts proved successful, and it was determined that § 87(2)(b) was unavailable. § 87(2)(b) completed a civilian complaint report at the 47 Precinct following the incident (enclosure 5). In this, he stated that he was approached by an officer who told him to lean against the car. The officer then frisked him, and emptied his pockets. § 87(2)(b) also saw that another officer had opened his brother's door and was questioning him.

Police Interviews

Captain Thomas Galati (Capt. Galati has since been promoted and is now Deputy Inspector Galati)
Capt. Galati was interviewed on July 20, 2001. Capt. Galati was the commanding officer of the 47th Precinct.

On May 25, 2001, Capt. Galati and Lt. Paul Deentremont were driving northbound on White Plains Road, in Capt. Galati's unmarked Green Chevy Impala, en route to a joint checkpoint with the Mount Vernon Police Department. Capt. Galati was unsure of who was driving at the time, although he thought it was Lt. Deentremont.

When they came to 241st Street, when Capt. Galati and Lt. Deentremont saw a group of four or five people standing in front of a deli on the north corner of 241st Street. Two males in the group appeared to be holding forty-ounce bottles of beers around the neck of the bottle, which were wrapped tightly in paper bags. Capt. Galati and Lt. Deentremont continued at a slow rate of speed, and it was at this time that Capt. Galati felt that he had reason to stop these two men for possessing what he considered to be open containers of alcohol. Capt. Galati elaborated by saying that although he did not actually see them put the bottles to their mouths, he thought that they were drinking since they were holding the bottles around the neck and because they were standing on the corner. Capt. Galati stated "I thought they were possibly drinking".

Capt. Galati and Lt. Deentremont then did a u-turn, Capt. Galati saw that the group of people in front of the bodega had broken up. The two men who had the beer had gotten into a black vehicle, which was parked across the street from where they had been standing. Capt. Galati recounted that the fact that the group of people had broken up contributed to his suspicion that criminal conduct was afoot.

The officers then stopped their car behind the black car. When they got out, Lt. Deentremont approached the driver side, while Capt. Galati approached the passenger side. When Capt. Galati reached the trunk area, he knocked on the back of the car, at which time the passenger side occupant exited the vehicle, looked at Capt. Galati, and started to walk towards the front of the car, which made him think that he was trying to get away. Capt. Galati noted that the man did not have the beer in his hand, and had not closed the door to the vehicle. After taking a few more steps, Capt. Galati called for the man to come back. The man turned around, looked at Capt. Galati, and walked to where he was standing. Also during this time, Capt.

Galati saw that a bottle of beer was lying on the floor, which appeared to have its cap on. When the man came to where he was standing, Capt. Galati noted the presence of a bulge –possibly the size of a beeper or little bigger and with an unidentifiable shape– under the elastic-bottomed windbreaker that the man was wearing. Capt. Galati recounted that it could have been a gun, while it concurrently could have been a cellular phone. Capt. Galati explained that he based these observations from his seventeen years of experience in the Police Department, making numerous gun arrests. Another factor contributing to his suspicion was the fact that the surrounding area is a known drug location, and was also an area where there had been a number of shootings. Capt. Galati added that his suspicion was also based on the fact that once they had passed the group of individuals, they had scattered although he had admitted that he was not sure if they had seen him.

Capt. Galati first asked the man what the object was that was on his waist, to which the man responded that it was a cell phone. At the same time that the man said this, Capt. Galati felt the object under his windbreaker, and determined that it was not a weapon. Capt. Galati then asked the man to remain standing next to the car for the remainder of the stop. After feeling the object under the windbreaker, the man complained to Capt. Galati that he and the man that he was with had been stopped because they were black. He also told Capt. Galati, in reference to the bottle of beer “It’s not open, you can’t do shit”. Capt. Galati then asked the man if he had identification, and the man said no. Lt. Deentremont, from the other side of the car, told Capt. Galati that everything was alright, and they both walked back to the car.

Capt. Galati explained that he did not feel like pursuing the investigation in to the bottles since he had an operation to deal with up the road, and because the man was being uncooperative.

Lt. Paul Deentremont

Lt. Deentremont was interviewed on July 20, 2001. Lt. Deentremont was the Special Operations Lieutenant for the 47 Precinct at the time of the incident.

On May 25, 2001, prior to his interaction with the complainants, Lt. Deentremont and Capt. Galati were en route to the Mount Vernon – Bronx border for a joint operation with the Mount Vernon Police Department. At the time, Lt. Deentremont was driving while Capt. Galati was in the passenger seat. When they came to the vicinity of 241st Street and White Plains Road, which Lt. Deentremont described as being an area known for narcotics activity and gun violence, he drove at approximately ten miles an hour and visually scanned the area. On the east sidewalk, Lt. Deentremont saw that a group of individuals gathered, some of whom appeared to have forty ounce bottles of beer in their hand, which were wrapped tightly in paper bags, and were being held by the neck. Lt. Deentremont thought that the bottles were opened since they were being held by the neck and because he did not see a cap on them, although he did not actually see the men put the bottles to their mouths.

As they drove past, two males from the group looked at the officers vehicle, and then walked across the road, to the west side of the street, where their vehicle was parked. Lt. Deentremont did not recall what the other individuals did at this time. Lt. Deentremont then did a u-turn, drove down the street, and stopped behind the car which the two men were getting into. The officers then got out of the car; Lt. Deentremont approached the driver side while Capt. Galati approached the passenger side. While approaching the car, Lt. Deentremont saw that the man in the passenger seat got out of the car, left the door open and quickly walked in the opposite direction from which Capt. Galati was coming. He then noted that Capt. Galati started to have a conversation with the man –he added that he did not know what was said– at which time he stopped walking away. Lt. Deentremont then proceeded to the driver side door and asked the driver for identification. Lt. Deentremont recounted that at this time he saw the bottle of beer, and it appeared to have its cap on, but he did not recall where the bottle was located. The driver in turn gave Lt. Deentremont a § 87(2)(b) identification card, and Lt. Deentremont again requested his license. The driver then gave him and out of state license, and handed him back his other ID. Since the driver did not extend his hand to receive the

card, Lt. Deentremont put it on to the dashboard of his car. When he looked at the license it appeared to be valid. Lt. Deentremont then looked up to Capt. Galati and told him that the license appeared to be valid and the alcohol appeared to be unopened. After the license was handed back, Lt. Deentremont and Capt. Galati walked back to their car.

Documents and Information

47 Precinct Stop and Frisk log (enclosure 13)

Capt. Galati, on May 25, 2001, was registered as having effected a stop with precinct serial number § 87(2)(b)

Stop and Frisk form (enclosure 14)

The stop and frisk form states that § 87(2)(b) was stopped and frisked, and it said that he refused to provide his address. Under “Specify Felony/Misdemeanor suspected” it is written “CPW gun felony”. Under the section for suspect’s actions, the boxes for “changing direction at the sight of officer” “suspicious bulge/object” and § 87(2)(b) holding beer bottle” are checked off.

Request for Records Check from NYS Police (enclosure 16)

According to the New York State Police records, no check of § 87(2)(b)’s license plate was performed.

Conclusions and Recommendations

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) recounted that in the company of his brother, he purchased two bottles of beer, which were placed in to a single paper bag, which he carried across the street. Lt. Deentremont and Capt. Galati conversely asserted that they saw both men standing on the sidewalk, holding forty-ounce bottles of beer which were tightly wrapped in paper bags.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

Kamins Search and Seizure reads “an officer’s approach of either a stationary or parked vehicle is analogous to an officer’s approach of a citizen on the street to request information... The officer is permitted to ask questions concerning the driver’s identity, address and destination and can require the driver to produce identification” (Kamins 352 – enclosure 1). § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Kamins Search and Seizure, paraphrasing *United States v. Cortez*, says that an officer must have “ ‘particularized and objective basis for suspecting the person of criminal activity’ ... To support this suspicion, an officer must indicate specific and articulable facts which reasonably prompted the stop; hunches and ‘gut feelings’ will not be sufficient” (Kamins pp. 133 – enclosure 2). § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g) In relation to bulges on the waistband area, Kamins Search and Seizure reads “if an officer sees a ‘suspicious bulge’ in the waistband area, believes it is a handgun from his prior experience, but does *not* see the outline or configuration of a gun, his frisk of the suspect will not be upheld unless there is some indication of criminality” (Kamins pp.163-4 – enclosure 3). Capt. Galati maintained in his interview that the object under the windbreaker did not have the defined outline of a handgun, § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g) In order for a frisk to qualify as misconduct, it must be evident that the officer “acted with knowledge that he was acting improperly, acted without concern for the propriety of his actions, or acted without due and reasonable care that his actions be proper” (enclosure 4). § 87(2)(b), § 87(2)(g)

Allegation A: Lt. Paul Deentremont stopped and questioned § 87(2)(b)

Allegation B: Capt. Thomas Galati stopped § 87(2)(b)

§ 87(2)(b), § 87(2)(f)

Allegation C: Capt. Thomas Galari frisked § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Allegation D: Capt. Thomas Galati searched § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Whereas the frisk was observed by § 87(2)(b), he never observed a search. § 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: